

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, SW
WASHINGTON, D.C. 20554**

Date: October 14, 2005

In the Matter of:

Comprehensive Review of Universal Service)	WC Docket No. 05-195
Fund Management, Administration, and)	
Oversight)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

**COMMENTS TO THE NOTICE OF PROPOSED RULEMAKING
AND
FURTHER NOTICE OF PROPOSED RULEMAKING**

In response to the Notice of Proposed Rulemaking (NPRM) published in the Federal Register, Volume 70, Number 138, on July 20, 2005, the following comments are submitted to the Federal Communications Commission (FCC) by the California Department of Education (CDE) Education Technology Office and the California E-rate Focus Group, a statewide advisory group to the CDE, that includes representatives of California school districts, county offices of education, libraries, E-rate consultants, and E-rate vendors.

Executive Summary

California's coordinated response includes a broad spectrum of participants, including small and large school districts, libraries, county offices of education, service providers, and consultants. These entities feel strongly that the items listed in the executive summary are vital to the improvement of the Universal Service Fund (USF) program. Please refer to the main body of the comments for specific details pertaining to the following summary of issues and subjects.

- Schools and libraries should be funded based on "industry standards" including utilizing ranges of services and "life cycle" concepts
- Priority One services should include all "essential services" which include telecommunications, Internet access, and basic maintenance for both telecommunications and infrastructure.
- Deferred maintenance would be Priority Two.
- Block Grants would be detrimental to the program and would penalize small, medium, or large school districts because the funds would be so diluted as to be ineffective.
- The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) needs to improve its own performance measures and to impose penalties on sub-contractors that fail to perform.
- Unused funds should be rolled over into a fund to provide internal connection services to those unconnected schools without a sufficient discount to adequately provide for a sufficient infrastructure to provide access.
- Provide an ombudsman for every 500 schools or libraries.
- The USF program for schools and libraries is intended to be self-certifying; and yet, Program Integrity Assurance (PIA) insists schools and libraries must provide proof to items they already have certified. The FCC must decide if it is or isn't a self-certifying program.
- The FCC should coordinate various timing issues with school and library budgets.
- Duplicative audits occur within the SLD (conducted by *Auditor A* and *Auditor B*) and in internal district or library audits conducted by outside auditors. There could

be better coordination and cooperation to reduce redundancy, costs, and burden on applicants.

- Documents should be standardized so all districts submit the same invoice and Item 21 forms. Standardized documents will reduce confusion for applicants and SLD reviewers.

Comments

On the following pages of our response, we present our comments in a numerical order that corresponds to the paragraph numbers of each item presented in the NPRM. For example, item 15 in our response, corresponds to item 15 in the NPRM. We would be pleased to assist the FCC in clarifying our position on any of the issues presented in our comments.

The California E-rate Focus Group believes that if the following recommendations would be implemented, the subsequent outcomes would include improved effectiveness and efficiency of the USF program. Therefore, we present to the FCC the following comments:

RE: NPRM Item 9: California respectfully responds to the FCC's request for comments on whether the Commission should modify its rules pertaining to meetings of the USAC's Board of Directors. While both Dr. Brian L. Talbott, Executive Director of American Association of Educational Service Agencies, in Arlington, Virginia, and Dr. Douglas D. Christensen, Commissioner of Education for the Nebraska Department of Education, in Lincoln, Nebraska, represent school agencies, the SLD lacks a School District employee member. Anne Campbell of the National City Library, in California, represents libraries. It is important that the other USAC members understand the challenges facing school districts in attempting to comply with the complicated rules of the Universal Service Program for schools and libraries. Unless they are in the trenches they lack that intimate knowledge. The California E-rate Focus Group recommends a minimum of two school district members on the USAC Board of Directors. One group should represent large Districts and another should represent small districts.

RE: NPRM Item 10. California comments on the FCC's question whether it should adopt rules to require the Administrator to implement ethics standards and procedures for addressing conflicts of interest, or if the FCC should adopt specific rules governing the ethics standards and conflicts of interest for officers and/or employees of the Administrator. California believes that the FCC should implement ethics standards and conflict of interest rules for all of the Administrator's board members, employees and sub-contractors. School districts and libraries have existing ethics requirements and conflict of interest laws to provide full disclosure and to avoid fraud. Therefore, it seems reasonable to implement similar measures for USAC as they administer \$2.25 billion per year to schools and libraries throughout the nation. Further, these ethics standards

should be clearly documented, signed by employees or sub-contractors and have substantial penalties for violation.

The FCC also requests comments whether the FCC should adopt rules addressing the Administrator's procedure for handling confidential information, including confidential information related to the federal government. California respectfully suggests that all meetings should be open and public with the exception of personnel matters and litigation. California's public record acts (the Bagley-Keane Act, the Brown Act, and the California Public Records Act) mandate full, public participation and disclosure of all documents pertaining to the people's business, except in specific instances, which relate to personnel or legal matters. Therefore, it seems reasonable that USAC would convene closed sessions only for similar matters.

The FCC notes that all meetings of the Administrator's Board of Directors are to be public. California believes the FCC should expand this public participation by allowing school districts, libraries, service providers, and the general public to provide feedback to the Administrators and Board Members during meetings. While school districts, libraries and service providers have attended USAC Board of Directors meetings, no specific venue or agenda item allows for public comments.

California respectfully suggests that meetings of the Board of Directors should allow opportunities at each meeting for the public, school districts, libraries, service providers, and consultants to address the Board of Directors, including sub-committee meetings. The Administrator and its Board of Directors are managers of public funds. Therefore, the public should be provided the option to bring issues directly to the board. In addition, California suggests that the Board of Directors meetings should be held in different locations throughout the country, which would allow more school districts and libraries to attend the meetings and make comments.

RE: NPRM Item 11. California responds to the FCC's request for comments on whether it should revise the content or frequency of the Administrator's reports. Certainly, USAC performance measures and results should be made available to the general public from both USAC and its sub-contractors. Without accountability to the people it serves, the USAC SLD's performance measures mean little. While administrative reports are burdensome, they can provide valuable information about the workings of an organization. The Board of Directors meets quarterly; therefore, quarterly performance reports should be required from USAC and the sub-contractors.

RE: NPRM Item 18. The FCC seeks comment on establishing suitable performance measures for evaluating the administration of the USF program. These measures include establishing the most useful and valid outcome, output, and efficiency measures for the E-rate program, as well as for the administration of the program. Output measures currently exist for USAC and its sub-contractors but apparently lack enforcement. Unfortunately, there seems to be virtually no penalties for a failure to meet the performance measures. Timelines, reporting requirements, and deadlines currently

exist for the SLD and sub-contractors. Acknowledging those output measures and enforcing penalties to ensure compliance will increase efficiency and reduce the "snowball effect" of inefficiencies.

RE: NPRM Item 19. The FCC seeks comments on whether USAC should revise their information collection process. Unfortunately, the current E-rate data gathered on FCC Form 471, Block 2, are somewhat insignificant, as funding does not necessarily directly relate to improved access or more connections. Funding is required to MAINTAIN the current level of service. This on-going funding stream is essential for a seamless communication of information to schools and libraries that the entire program is designed to provide. The FCC should ensure that the data it gathers does not focus exclusively on building networks and expanding bandwidth.

RE: NPRM Item 20. The FCC seeks comments on suitable outcome, output, and efficiency measures for the E-rate program (as opposed to the administration of the program). In the past, the FCC used the percentage of public schools connected to the Internet as a measure of the impact of the E-rate program and its success. An agreed upon definition of "connectivity" is lacking. A narrow definition of connectivity merely means that schools can access the Internet. It does not mean that every classroom and library in the nation is connected. Nor does it mean that every school and library can provide upgrades or even maintain the level of connectivity. Building networks and then failing to provide support for their ongoing expansion, usage or maintenance is unproductive and the antithesis of the E-rate program's original purpose.

It is recommended that the FCC divide services into two categories: essential and deferred maintenance. Essential services should be telecommunications, Internet access/service, and daily basic maintenance currently under internal connections. These should be funded as Priority One. Deferred maintenance is the upgrade, refresh, modernization, or replacement of eligible equipment or systems that have reached end of life or fail to meet the instructional needs of schools. Deferred maintenance is one-time funding and, applying the "two in five" year rule, would be funded as Priority Two.

The focus should be on streamlining processes to target 100 percent of telecommunications, Internet access/service and basic maintenance of these Priority One services and to fully fund recurring services by July 1 of the funding year. The SLD may want to look at opening a window for 471s for these services sooner to make a July date. Target dates for funding Deferred Maintenance can be extended allowing all school districts and libraries to be funded for essential services.

California believes there should be a special one-time set aside of funds left from previous years to network any remaining classrooms without connectivity. Every effort should be made to fund down to the 20 percent level to achieve 100 percent connectivity.

California is an example of a state with a majority of the schools and libraries having basic connections, which means that schools and libraries can almost always connect to the Internet. However, often in the schools and libraries with the lowest percentages of Free and Reduced Lunch Program (FRLP), and therefore the lowest E-rate discount of 20 to 40 percent, those schools and libraries lack complete physical connectivity. They may have connections to administrative areas, but due to a lack of infrastructure and funding are unable to provide for the cabling and hardware needed to ensure each classroom is connected.

The FCC seeks comments on how it can determine which schools currently have no connectivity at all, so that we can improve the program by reaching these unconnected schools. In California, through a statewide school technology survey, we can specifically identify needy schools and libraries and develop a list of priorities based on FRLP numbers, rural status, and current level of physical connectivity. Connectivity should be defined as providing complete physical networks, Internet access, telecommunications and ongoing basic maintenance for every school district, every school, every classroom and every library in the nation.

RE: NPRM Item 20. The FCC seeks comments on how it can take an evolving level of services into account in adopting performance measures. As stated above, industry leaders can provide input regarding average life cycles for equipment and cabling and use industry standards to determine what "basic" levels of physical support are required. When possible, the FCC could fund schools and libraries at those levels. By developing "ranges" of service including access, bandwidth, infrastructure and so forth, the FCC could also address the issue of "gold plating." School districts and libraries with excessive requests, for example, OC 48 for a District of 10,000, would have to prove that their need exceeds the "range" for their size district.

RE: NPRM Item 20. The FCC also asks for comments to illustrate ways to measure the extent to which broadband services have been deployed to classrooms. California finds it difficult to address the issue of broadband without a specific definition of "broadband." Further, broadband is merely a tool for schools and should not be used as a "measurement of success or completeness."

California believes that the outcome measures not only should include measures of connectivity, but also measures of access. Access includes bandwidth, performance, and reliability. Performance and reliability could be measured in terms of a network being up and working within acceptable periods of time. Broadband access could be measured by using performance and reliability measures.

The FCC notes that the United States Department of Education already collects information on the use of the Internet in classrooms, but does not collect information on broadband. The FCC states that it does not want to expend resources for a repetitious inquiry; however, the FCC does not distinguish between the measurement of tools and the measurement of success.

Tracking student data, including assessments tied to curriculum content, is essential in providing information a teacher needs to adequately teach students. Providing distance learning for professional development to ensure highly qualified teachers is essential and can be highly productive if used in the correct environment.

It is virtually impossible to measure the results of providing improved communication tools in the classroom and libraries. Therefore, by setting industry standards and ranges within those standards, the FCC can at least control for "gold plating" and ensure that it has provided the tools necessary for communication.

RE: NPRM Item 21. California responds to the request for comments regarding the performance measures to evaluate the implementation and Enhancing Education Through Technology (EETT). It is difficult, if not impossible, to directly correlate technology with student achievement due to the large number of variables that must be controlled when doing valid, replicable research. Network connectivity and telecommunications are essential systems for daily instruction and instructional support. Performance measures should focus on access, which includes bandwidth, performance, and reliability. Audits should continue to identify essential uses, however the focus should be on continuous access.

Therefore, it seems more reasonable to focus on the obvious advantages of providing technology in the classroom. These include giving teachers the ability to develop individual learning strategies using data driven assessment tools (DDAT). DDATs provide teachers with the ability to test students on a regular basis (chapter, unit, and so forth) and align curriculum and instruction with state standards. DDATs also provide for long term tracking of student achievement.

RE: NPRM Item 22. The FCC is seeking comment on meaningful ways to distinguish the impact of E-rate funds from other governmental and non-governmental programs that support services or facilities similar to the E-rate program. It asks if there is an effective way to isolate and measure the impact of the E-rate program on schools and libraries. California does not believe there is an effective way to distinguish the impact of E-rate from all other funding opportunities. California has many other programs, which are used as a match for E-rate funds. These include modernization funds, new school construction, EETT, Title I funds, grant funds from a variety of foundations. Network connectivity and telecommunications are essential systems for daily instruction and instructional support. To attempt to isolate these funds and distinguish their impact would be overly burdensome and an almost impossible task for both the beneficiaries and the program administrators.

RE: NPRM Item 23. The FCC requests comments on ways to measure the efficiency and effectiveness of the E-rate program. It seeks a measurement that could be based on student or library population. In California, installation costs and maintenance costs for small, remote, or rural districts are most costly per student, as compared with large urban districts due to the cost of connecting to the Internet. Therefore, school districts

and libraries should not be measured based on the amount of funding per student or patron. Rather, the FCC should look at industry standards to develop funding measurements for technology.

It is recommended that the FCC consider taking action that would: (a) streamline the application process; (b) allow for three-year commitments when there is a multi-year contract; (c) require a PIA review only if there is a greater than ten percent increase in the value; and (d) permit limited application corrections during a PIA review.

RE: NPRM Item 23. The FCC also asks for comments on timing issues. Timing is critical to school districts and libraries if they are to be viewed as "business-like." Providing funding a year or two years after it is requested is disruptive to the students, teachers, patrons and administrators who are dependent on this funding for managing their basic telecommunications needs. The FCC asks for specific deadlines that should be modified. If the goal is to provide funding for schools, much more flexibility needs to be provided to school districts and libraries that often are held to unreasonable and unrealistic subjective deadlines. Examples of rigid rules include the seven-day rule, which requires districts and libraries to respond within seven days. Many districts and libraries have lost previous funding based on the implementation of this rule. To appeal this decision takes months and often years, and often results in reduced communication for districts and libraries, and effectively defeats the purpose of the program. An alternative would be to notify the school district, receive an acknowledgement of that notification in writing, and then move to additional applications until the data are provided. The SLD has previously sent emails which never arrive, or facsimiles that are lost, or phone calls to the wrong extension which are erased, and then penalize the schools or libraries if they did not respond.

RE: NPRM Item 23. The FCC seeks comments on the need to modify its information collection processes, and the burden any such modification would place on stakeholders in the program, particularly small entities. Some of the data collected by the FCC is unnecessary and meaningless. For example, Form 471, Block 2, data collection is outdated and unrealistic. Most classrooms have connections and access to the Internet. It is time to ask if a school has access to distance learning, on-line professional development, or data driven assessment tools.

RE: NPRM Item 26. The FCC seeks comments on ways to achieve more efficient administration and management, while continuing its efforts to deter waste, fraud, and abuse. California believes the most effective way is to use existing tools. The FCC and USAC have existing performance measures for their sub-contractors, which they need to enforce to improve efficiency. By utilizing the existing avenues for the prevention of waste, fraud, and abuse, including PIA reviews, selective reviews and audits, USAC can improve its efficiency and can spot waste, fraud, and abuse quickly.

It is recommended that the FCC review funding for maintenance and consider Service Levels Agreements when it is more cost effective than time and materials. In the case of

one California school district, USAC and school district staff spent hours analyzing service provider's contracts and removing items that were less than \$100 in value. This analysis costs thousands of dollars to remove an ineligible item that was insignificant.

It is recommended that the FCC take action that would define basic telecommunications, Internet access/service and maintenance as Priority One services fully fund these reoccurring services by July 1 of the funding year.

Examining the existing program and it's processing of applications, (such as mailing the Item 21 attachments to Kansas and then sending them to New Jersey), is a first step. Often the PIA reviewers ask for the documents to be faxed directly to them since Kansas seems to be slowing down the process.

RE: NPRM Item 27. The FCC seeks comments on the matter of dispersing funds based on a formula similar to block grants. The FCC suggests it could change its rules to use a formula to distribute funds directly to schools and libraries according to their size and to allow funds to be used in a more flexible way. For example, funds could be used for communications-related services and equipment, or for training on how best to use such service and equipment, rather than requiring applications based on needed services and equipment. California strongly argues against such a concept, which results essentially in block grants. The administration of such grants would disadvantage small and large schools and libraries and remove the funding from the most needy. This approach would not further the goals of the program. Instead, it would dilute the funds to the point that it would result in less effective implementation. Block grants have routinely been problematic for schools as they are considered "categorical funds." Schools and libraries that do not have a genuine need would be utilizing these funds for "gold plating," as this would be the only avenue they have for expending the funds. Schools and libraries with a greater need, such as small schools and libraries, would not have enough funding available to provide the tools necessary to effectively implement a technology plan based on their current needs.

RE: NPRM Item 31. The FCC seeks comments on the E-rate application process, including shortening, combining, or eliminating FCC forms. It has tentatively concluded that it should adopt a streamlined, multi-year application process for Priority One services. The FCC asks commenters whether such a streamlined process may create the potential for waste, fraud, and abuse, and if so, how it can mitigate such risk. California responds that while it would be difficult to completely eliminate waste, fraud, and abuse, Priority One services hold a lesser degree of threat than Priority Two services. California believes that schools and, in particular, libraries, fail to utilize the program due to its complexities. There is also a significant issue with the number of audits that bottleneck the application process and put an extreme burden on school district staff to complete the additional documentation and collect additional data. Many, many hours are put into responding to these audit requests. In some instances, when the status on a held application was requested, the answer given was simply, "We have no more questions at this time."

A California school district was recently the subject of a prior year audit, an ongoing PIA for the current year, and an Item 25 Selective Review at the same time. Needless to say, this put an overwhelming burden on District staff to respond to all the requests in a timely manner and still maintain their daily responsibilities and activities. California feels that some burdens associated with the audit process are unreasonable, and the audit process should be coordinated to ensure that multiple departments in a school district are not responding to multiple requests for the same or redundant information.

The FCC asks if the Administrator should provide applicants and service providers with information regarding the status of applications and if it should establish deadlines or target dates for processing applications. California responds: YES. Deadlines are required of schools and libraries due to strict fiscal accounting rules and fiscal calendars. While California recognizes that there are limitations such as responses from schools to PIA questions, there are certainly no obstacles other than lack of personnel that would keep the SLD from achieving their deadlines and performance goals. California further believes that all FCC forms should be submitted electronically. California notes that the SLD is now preparing to electronically receive Item 21 attachments for funding year 2006-07, and we are pleased with that development.

Suggestions for streamlining the application process should include allowing multiple funding years along with reduced PIA reviews in subsequent years. Once a contract and funding request number (FRN) have been approved, subsequent requests for that specific contract should be approved with little or no additional review. For those schools and libraries that only apply for Priority One services, a simpler form and reduced red tape should be developed. This would allow the SLD more information for future years funding based on the previous Priority One funding. As discussed before, an ombudsman for a certain number or kind of school or library should be considered. Perhaps one ombudsman would serve Priority One districts and libraries only, and Priority Two would require a different ratio of ombudsman support.

The program is self-certifying as evidenced by the multiple certifications that have to be certified on each application. This self-certifying process, coupled with the multiple requests to prove that the certifications are true year after year and application after application, are a direct cause of much of the backlog and bottleneck problems that plague the process today. Requiring that school districts and libraries self-certify, and then spending millions of dollars once again proving these self-certifications, is counter-productive.

California suggests that there should be a master record of certifications (remote access certifications, server certifications, and so forth). Such a master record would help avoid redundant requests for information. California also suggests that the FCC initiate the development of an internal audit requirement for applicants who meet a certain criteria of complexity or dollar amount requested. This audit requirement could be integrated into part of the annual audit that school districts and libraries are currently required to undergo. This process would not negate the need for random audits at the direction of

USAC or the FCC, but rather, it would start to allow the self-certifying process to be viewed as valid and effective.

RE: NPRM Item 32. The FCC seeks comments on the timing of various parts of the FCC and USAC processes critical to schools and libraries, many of which operate according to strict state or municipal budget and procurement schedules. California believes that the FCC should impose penalties on USAC and the SLD for failing to meet their timelines. Delays have cost school districts and libraries millions of dollars, as the FCC correctly recognizes, in addition to causing ministerial errors on subsequent applications. These delays and errors complicate auditing and undermine, in some cases, the ability to combat waste, fraud, and abuse. All application processing, appeals, and other processing should have timelines. There is not enough staff to handle the huge amount of work created by the program by not following the original intentions of having a self-certifying program. New deadlines should be created for USAC, SLD and its sub-contractors. Further, the FCC should have deadlines no later than in early June to approve the funding for the upcoming year. In Year 8, no Internal Connections had been funded as of September 25, 2005. With regard to appeals timelines, it is recommended that the SLD/USAC respond to appeals within 60 days following the filing of an appeal.

RE: NPRM Item 33. The FCC seeks comments on what guidance, if any, should be provided to define a completed application for E-rate money. The FCC notes that, since the inception of the program, parties have experienced problems with meeting the requirement to submit a complete application during the filing window. This appears to be an FCC problem, not a school or library problem. Therefore, the FCC should allow districts and libraries to finish the application process by identifying mistakes and allowing districts and libraries to make reasonable changes to an application. As discussed above in many different places, the definition of the terms, rules and the implementation for deadlines should be determined by the FCC and then enforced. Greater clarity for the applicants would be a welcomed addition to the program.

RE: NPRM Item 35. The FCC seeks comments on the Forms 470, 471, 472, 473, 474, 486, and 498. The 470 forms are currently too vague to respond to which negates their purpose. School districts and libraries should be given specific direction by the SLD on the components of an Request for Proposal (RFP) and then allowed to meet those specific components. The FCC also seeks comments on the certification requirements in the E-rate forms. As noted before, the FCC needs to decide if it is going to use the certifications or have districts and libraries prove each certification. If the FCC is going to continue to ask for proof, then eliminate the self-certification and develop a system that provides for such proof based on a standardized method.

It is recommended that the SLD mandate that the form 471 be filed separately for Telecommunications and Internal Connections. By mandating the filing of two separate forms, the SLD would remove the problem of slowing down the review process by

combining "essential" services such as telecommunications and Internet access and internal connections.

Further, it is recommended that the SLD make quarterly disbursement amounts available online to provide districts and libraries with the most up-to-date information. In addition to making this information available online, the SLD should also ensure that Billed Entity Applicant Reimbursement (BEAR) payments are paid within 20 days of receipt by the service provider and by placing penalties on a service provider who fails to pay.

California recommends that forms, such as invoice forms and Item 21 forms, be standardized to maximize efficiency. Item 21 attachments should be aligned with the invoice form to insure compatibility and to ensure that the invoice reviewer at the SLD has all the information necessary to approve invoices. This process also will ensure that auditors have all the information they need to align these two essential components. To ensure accuracy in the Item 21 attachments, it is recommended that the SLD mandate that the service providers sign off on the attachments. This step would help to prevent a situation in which a service provider contracts for a service for which an applicant failed to apply.

Additionally, it is recommended that the invoicing unit should have access to a PIA reviewer's notes, as well as appeal decisions, so that key SLD/USAC staff can see that certain items were indeed accepted and eligible for funding.

RE: NPRM Item 36. California responds to the FCC's request for comments on the Timing of Application Cycle. The FCC asks if it "should better synchronize the application and disbursement process with the planning and budget cycles of the schools and libraries benefiting from this program." California responds with a resounding: YES! California's Budget Cycle is from July 1 to June 30, but a budget often is not approved for the next fiscal year until well into August, even though the state legislature is mandated to have a budget by June 30. Therefore, California school districts and libraries do not know their funding until after the budget is approved, at least nine or ten months after the FCC's rule which says:

Per FCC Rule 54.504(b)(2)(v), at the time the Beneficiary submits the FCC Form 470, all of the necessary funding must have been budgeted and approved to pay for its non-discounted portion for the requested assets and services for the funding year.

Obviously, this is problematic for California school districts and libraries. California respectfully requests that that a "draft budget" be sufficient to provide matching funds for any E-rate work for the following fiscal year. Since the Form 486 provides for a self-certification from a school or school district that the budgeted funds are available, a school or school district and a library should be held responsible for proving that its "draft budget" is basically consistent with their final working budget for E-rate.

RE: NPRM Item 36. The FCC also requests comments on the timeliness of the National School Lunch Program (NSLP). California's NSLP numbers are gathered in October of the funding year, but are not certified by the CDE until April of the following year. Therefore, the numbers checked by the PIA reviewers often are different from those stated by a school district. The most current figures are not available to the PIA reviewers unless the FCC changes its rules to include (as an Excel attachment rather than a paper copy) a copy of the NSLP numbers as of October for each funding year. This rule change would provide for greater consistency and accuracy in the NSLP numbers submitted to the SLD and could avoid numerous follow-up phone calls for verification. By certifying to NSLP numbers submitted with an application, a school or school district is therefore responsible for the back-up documentation, such as surveys or actual student applications for the NSLP, if audited. In fact, this suggestion supports the concept of "self-certification program" that was originally the foundation of this program.

Additionally, the FCC asks if there are "inconsistencies between Commission rules (or USAC procedures) and state or municipal rules, including state or municipal procurement rules." In fact, the FCC has allowed USAC/SLD to accept NSLP numbers, which are based on two different time frames. For example, if a PIA reviewer is not able to find the FRPL numbers on the CDE DataQuest Web site, the reviewer asks for certification from a school or school district to support the numbers. Therefore, the reviewer would have numbers for some schools from October 1 of the previous funding year (based on the gathering of CBEDS data) and then during a PIA review, a school or school district would provide self-certified numbers from their "lowest month" for each of the schools that the PIA reviewer cannot find on the CDE Web site. This SLD practice creates two different sets of FRPL numbers from two different timeframes. Allowing schools and libraries to completely self-certify and provide the supporting documentation based on the most recent October 1st data during the Form 471 application process would end the confusion related to varying FRPL numbers.

The FCC recently allowed for a survey method. The FCC will allow the district to extrapolate a FRPL lunch number from those "returned surveys" providing that at least 50 percent of the student body returned the surveys. Unfortunately, some consultants and districts and libraries interpreted this to mean that schools and libraries could selectively accept surveys from the poorest students, and therefore skew the FRPL lunch number percentages. The USAC/SLD has no way of confirming the actual numbers, since the "surveys" of the more affluent students don't exist. Consultants who encourage this practice should be investigated. Further, the FCC seeks comment on whether an annual application cycle is necessary or whether it would be more efficient to permit multi-year application cycles. California responds that multi-year application cycles for some types of applications, such as telecommunications and Internet access, would certainly reduce the burden on schools and libraries as currently required by the FCC and SLD. Many schools and libraries currently utilize multi-year contracts. It seems reasonable to allow for a reduced application process for those districts and libraries

using multi-year contracts. While still requiring a Form 471 request, the FCC and SLD could greatly reduce its own paperwork by accepting the preliminary review of multi-year contracts for each recurring funding year utilizing a contract.

RE: NPRM Item 37. The FCC seeks comments on Service Providers and Consultants, and specifically: (a) "whether we should establish certain criteria, such as quality standards or standards of conduct, for participating service providers and consultants; "and (b)"whether we should impose specific standards or a certification process for consultants for E-rate and consultants used by other USF beneficiaries." The FCC also seeks comments on any other measures the FCC should adopt to deter fraudulent actions by service providers or consultants.

California agrees with the FCC that there should be standards for consultants and service providers. The development of those standards should be conducted with representatives of the service provider, consultant and applicant community. California asserts that consultants or service providers who are found to be criminally negligent or fraudulent in their practices should be disbarred IMMEDIATELY from participation in the program. California also recommends the development of a more "open" line of communication with USAC and the FCC when a potential service provider or consultant is under investigation. An applicant may decide that it would be too great a risk to use a service provider or consultant under investigation and, as a result could select another provider. It is common knowledge that applications that list a questionable service provider are plagued with delays and additional requests for information. There should be a uniform, valid, and reasonable set of criteria for not selecting a service provider when using E-rate funding.

RE: NPRM Item 54. The FCC seeks comment on adopting rules to better ensure that the disbursement process is administered in an effective, efficient, and competitively neutral manner. The FCC asks commenters to discuss whether experience has shown that the Administrator disburses the correct amount of funds in a timely manner. California responds clearly that FCC, USAC and SLD have not disbursed funds in a timely manner. As discussed above, deadlines and performance targets should be developed and implemented with penalties for not completing targets or deadlines. The payment of invoices has been historically slow based on slow BEAR reimbursement and payments directly to service providers rather than districts and libraries. This lack of speed has eliminated many small business service providers in addition to harming school budgets, and affecting children. The FCC notes that some beneficiaries have asserted that the Administrator sometimes denies payment on submitted invoices even though the original application had been approved. The obvious solution to this denial of payment is to allow no longer USAC or the SLD to deny funding during the invoice process to approved applicants. Further, since technology plans are the foundation of the program, delays in approval, appeals and invoice processing all affect the goals of the technology plan and defeat the purpose of the program.

RE: NPRM Item 68. All entities should be audited. However, many times large school or school districts and libraries are audited by other agencies. Therefore, the FCC should have a process in place to determine if another agency has performed an audit. If another audit has occurred, then the FCC audit should begin with those audits to determine if a specific action or another audit is needed. California recommends an audit once every three years for all school districts and libraries.

If an audit finds unintentional errors or practices that need to be improved, then it may be helpful for SLD/USAC to develop criteria to determine if the beneficiary needs more training. If there are a large number of errors, then the beneficiary can be placed on a watch list and a special PIA team can work closely with a school or school district or library to ensure compliance and understanding of the rules. The review and audit environment should be one in which ministerial errors are allowed to be corrected with proper documentation.

The environment should be one of resolution and reform, not one of punishment for misunderstanding the program's complex rules and regulations.

RE: NPRM Item 69. The FCC seeks comment on whether the current structure of E-rate audits is appropriate to the program. Some schools indicate that E-rate audits are more intense and require them to expend more resources than do audits for the federal Title I educational program, which is a substantially larger program involving far more government money. California believes that the audits are often unreasonable. The FCC often utilizes auditors that lack information about the program itself and the inner workings of schools, school districts, and libraries. Audits by some auditors have been ineffective in exposing fraud, which is most often revealed as a result of a Whistle Blower complaint. The audits may have revealed mismanagement in the application process, but often this error in the application process arises from a lack of training or a misunderstanding of training content presented by USAC and the SLD for schools and libraries. Note this year (2005) is the first year SLD/USAC training sessions have been presented that includes representatives from schools, school districts, and libraries. Further, schools and libraries have experienced great difficulty getting adequate answers to their questions due to lack of training by SLD/USAC personnel in Kansas, at the SLD 800 number, and at the PIA level.

In some cases, audits have been conducted before projects are completed; yet the auditors ask for information, like final billing, which only can be provided after a project is complete.

Districts and libraries have had multiple audits, selective reviews, and PIA at the same time for different years. Schools and libraries do not have resources to respond to so many requests for different types of information at one time. Further, many schools, school districts, and libraries find an "inquisition" unnerving to the point of refusing to participate in the program any longer. Some honest and well-intentioned individuals ask the question: Why endure threats of repayment and personal punishment when the only

goal was to attempt to improve the communication of our school and library? Some California schools and libraries have negative anecdotes about the audits. It has been reported that some auditors discuss their high level of stress, rather than create an environment of cooperation.

The FCC asks how the process can be improved. California responds by stating that the FCC should recognize that the individuals applying are participating in good faith. The common goal is to provide funds for schools and libraries to improve communication tools. In many schools, school districts, and libraries, individuals have little support. Internet Technology Directors often have no secretary, so the demands that the auditors make upon them often take time away from the job of maintaining the networks. Recommendations include to: provide training at the local level for all schools and libraries; provide an ombudsman for every 500 districts and libraries; empower these ombudsmen to make immediate decisions and resolve problems; provide support before mistakes are made; and provide oversight at the application level. With such positive support, errors can be avoided and we can work together to reduce the need for audits. Further recommendations include training the auditors thoroughly in the programs and having an auditor available to assist schools, school districts, and libraries. Often it is impossible to communicate in the same terms auditors use, so put an auditor on the side of the district to help represent the needs of the districts and libraries.

Finally, California strongly urges the FCC to consider using standard documents for Item 21 attachments and to develop an invoicing process aligned with these attachments. Standardize the forms so that auditors have the information they will need when the district makes the request, before all the school and library employees have left and there remains no institutional memory. Do not impose rules that are not clear, as an example air-conditioning in MDF's and IDF's.

Returning funds should be a last resort as this practice harms students. An alternative would be to institute a one-year program of training and supervision for schools and libraries to prepare for future funding.

RE: NPRM Item 83. The FCC seeks comments pertaining to funds that are overpaid, and whether it should adopt a rule providing for an administrative hearing before the issuance of a letter seeking recovery of funds. If a PIA review did not catch an error, however which is later found and determined to be ministerial or clerical, then it is recommended that no recovery of funds should occur. However, if there are a large number of errors, then it is recommended that a school, school district, or library should be required to attend training and should be placed on a watch list for a year to ensure program understanding. When a recovery of funds is requested, then there should be allowance for an administrative hearing prior to the issuance of a letter seeking fund recovery.

RE: NPRM Item 84. California responds to the FCC request for comments regarding the recommendations of the Task Force on the Prevention of Waste, Fraud, and Abuse. The Task Force suggested a ceiling on the total amount of funding that an applicant can request. California has many large, urban school districts and libraries, including Los Angeles Unified and San Diego City Unified. Restricting these and similar districts and libraries would not decrease waste, fraud, and abuse; rather, it would punish the children who are the most needy, as most large urban school districts and libraries have extensive poverty populations. The Task Force asked if there were other measures, and again California believes that there are sufficient checks and balances in the system, but they lack coherent and timely implementation. As has been pointed out, doing three audits for three different funding years within months of each other, as exemplified by one California school district's experience, was a waste of funds that could have been used to audit additional beneficiaries.

The FCC asks if USAC should publicize "best practices" for E-rate program applicants. California suggests that before such a program is implemented, the development of clear and coherent criteria to evaluate what is meant by "best practices" would be an essential first step. Some auditors lack an understanding of the concept of standards, textbook-aligned technology, and data-driven assessment tools for teachers.

Additionally, the FCC wonders if modifying the competitive bidding rules, for example by requiring a minimum of three bids, would be an effective measure for deterring waste, fraud, and abuse. California shares the FCC's concern regarding the implementation of this requirement for rural districts and libraries and the result this requirement would produce. If rural districts and libraries, which are usually small, have to endure a more detailed review because they did not have additional bidders come forth, then they are essentially being penalized for their rural nature. The FCC is correct in its concern regarding this rule and Priority One services. Many areas only have one provider. California agrees that imposing this requirement and additional reviews would only exacerbate the waste, fraud, and abuse by requiring districts and libraries to seek out service provider's responses to avoid additional reviews. As suggested previously, standards for implementation based on a range of needs, rather than some specific formula, and the use of common sense, are essential in eliminating the "gold plating" of schools and libraries. PIA reviewers should wonder why a district with 1000 students has a DS3 line when large urban high schools with populations of 4000 plus have two T1's lines.

The FCC wonders what rules can be adopted by the FCC to assure that USF money is used efficiently. California believes that the concept of "life cycle" for hardware, software, and infrastructure should be determined by industry standards and would allow for upgrades when these life cycles expire. Further, the FCC needs to develop an avenue to approve new technologies. The current avenues require schools, school districts, and libraries to apply, then be denied, and then finally appeal the denials to force a review of a new technology.

It is recommended that no new rules for competitive bidding be implemented. Request that State and local procurement rules and policies apply.

RE: NPRM Item 91. The FCC seeks comment on whether they should revise the debarment rule to make it more effective against individuals and other entities, such as corporations. Currently, the process seems to be very ineffective. Given that some companies have confessed and been convicted of crimes, and still have not been debarred, the FCC has effectively eliminated debarment as a punishment. The FCC seeks ways to handle school, school district, and library fraud. If criminal intent is found, such as bid-rigging and kick-backs, there certainly should be punishments. However, for schools and libraries with honest individuals who do not understand the complexities of the program, education and training is the best offense for repeat problems. California suggests, once again, that more training be made available to schools, school districts, and libraries, and that there be an ombudsman for all states at perhaps a 1:500 school, district, or library ratio.